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**Regional Anti-Corruption Action Plan
for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan
and Ukraine**

Ukraine

Summary of assessment and recommendations

Endorsed on 21 January 2004

I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

General assessment

The development of a legal framework to address corruption began in 1995, was continued throughout 1997, and is since 1998 governed by a seven-year Presidential strategy – the ‘Anti-Corruption Concept for 1998-2005’. The legal framework for fighting against corruption builds on a significant number of laws and regulations; the effectiveness and interrelation of these legal acts is often difficult to assess, in part due to their overwhelming quantity.

The anti-corruption strategy is overseen by the Coordinating Committee against Corruption, which reports to the President. There is also a committee of the Supreme Rada (the Parliament) that deals with organized crime and corruption. Each of the line ministries charged with responsibilities in anti-corruption policies has specialized units to that effect: at the Ukrainian Interior Ministry – the Anti-Corruption Division of the Ukrainian Interior Ministry Main Department Against Organized Crime; at the Ukrainian Security Service – the Chief Department Against Corruption and Organized Crime, “K”; at the Ukrainian State Tax Administration – the Anti-Corruption and Security Department of the Tax Police. The Civil Service also has responsibilities to prevent corruption among civil servants. Ukraine has recently established a specialised unit within the Prosecution service to deal explicitly with corruption and organised crime.

While Ukraine has a rich array of legal instruments and broad strategic documents, efficient coordination, implementation and enforcement remain insufficient. Currently, the adoption and enforcement of corruption provisions needs to be channeled to a greater extent towards prevention.

General recommendations

In the near future, Ukraine should analyse and take stock of progress made in implementing the national anti-corruption policies currently embodied in numerous legal and policy documents. Such a critical and transparent analysis would help to identify clear priorities, focus at implementation and build broad public support for anti-corruption measures.

In the framework of this exercise, it is recommended that Ukraine analyses and introduces improvements in its current institutional set up in order to streamline and strengthen policy formulation and to coordinate capacities of an independent anti-corruption body responsible for strategic, analytical, preventive and coordinative tasks of the fight against corruption. Ukraine needs to concentrate repressive measures against corruption by enhancing inter-agency cooperation between investigation and law-enforcement agencies.

Strengthening and building up of exemplary professional and corruption-free agencies, and conducting vigorous investigation and prosecutions in selected corruption-prone institutions are necessary to demonstrate the possibility of a positive example and to make a wider positive impact in the society.

It is difficult to tackle corruption in all public agencies at the same time. It is therefore necessary to identify a limited number of public institutions or sectors where corruption is most widespread and particularly harmful. The regulatory and institutional settings and operational practices of such agencies or sectors will need to be reviewed and reformed in order to minimize factors which favour corruption (e.g. by limiting discretion allowed by the gaps in regulations, strengthening internal control, introducing preventive actions, recruiting new officials through transparent procedures etc.).

Specific recommendations

1. *On the basis of the analysis of the implementation of “the Anti-corruption Concept for 1998-2005” update the national anti-corruption strategy, which will take into account the extent of corruption in the society and its patterns in specific institutions, such as the police, judiciary, public procurement, tax and custom services, the education and health systems. The strategy should focus at the implementation of priority pilot projects with preventive and repressive aspects in selected public institutions with a high risk of corruption, including the elaboration of anti-corruption action plans. The strategy should envisage effective monitoring and reporting mechanisms.*
2. *On a conceptual level, more attention should be devoted to the prevention of corruption and to identifying and eliminating systemic regulative or organisational gaps that create corruption-prone environments. Preventive actions should not only focus on codes of ethics and similar preventive devices, but also reforming regulatory frameworks to reduce discretionary powers of civil servants, ‘open government’ measures such as increased transparency of decision-making procedures, access to information and public participation.*
3. *Strengthen the Anti-corruption Coordination Committee by ensuring high moral and ethical standards of its members, who should include representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.). Strengthen the independent status of the Committee, ensure a more appropriate frequency of the Committee’s meetings (currently it meets twice a year), strengthen its staff to carry out analytical tasks, and ensure sufficient resources. Upgrade statistical monitoring and reporting of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor’s Offices, and the Courts, which would enable comparisons among institutions – by introducing strict reporting mechanisms on the basis of a harmonised methodology to the Committee. Encourage stronger links, cooperation and exchange of information between the Committee and the Parliamentary Committee.*
4. *Concentrate law enforcement capacities in the specific area in the fight against corruption, which are currently fragmented, and develop operational specialised anti-corruption prosecution units, consider establishing a national Specialised Anti-corruption Unit, specialised and empowered to detect, investigate and prosecute corruption offences. Such a Unit could be an integrated, but structurally independent, or separate unit of an existing law-enforcement agency and/or the Prosecution Service. Apart from working on actual important corruption cases, one of the main tasks of such a Unit would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.). Ensure that sub-national (oblast and local) levels of law enforcement agencies are properly integrated.*

II. LEGISLATION AND CRIMINALISATION OF CORRUPTION

General assessment and recommendations

Ukraine has criminalised active (Art. 369) and passive (Art. 368) corruption in the public sector in its Criminal Code. Additionally, the Law on the Fight against Corruption provides for a broad administrative liability of civil servants.

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that there is room for improvements, which would bring the above mentioned criminal offences in line with international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), and which would in particular ensure the complementarities and harmonisation of relevant offences between the administrative liability under the Law on the Fight against Corruption and the Criminal Code.

Specific recommendations

5. *Harmonise and clarify the relationship between violations of the Criminal Code and the Law on the Fight against Corruption.*
6. *Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards. In particular, clarify elements of bribery through a third person; delineation of offences between an offer/solicitation and extortion, criminalise trading in influence. Consider increasing the punishments for active and passive bribery as well as the statute of limitations for corrupt offences.*
7. *Harmonise the concept of an "official" from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.*
8. *Ensure the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.*
9. *Introduce a proposal to amend the Criminal Code ensuring that the 'confiscation of proceeds' measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.*
10. *Introduce a proposal to criminalise non-reporting of instances of possible corruption of public officials, if as a result of the investigation it can be shown that corruption in fact existed, and that those who failed to report it can be shown to have been fully aware of it.*
11. *Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent the investigation and prosecution of acts of bribery. Specify procedures for the lifting of immunity for criminal proceedings and consider abolishing the requirement of authorisation on lifting the immunity in cases when a person is caught in flagrante delicto.*
12. *Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Ukraine should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.*
13. *Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.*

III. TRANSPARENCY OF THE CIVIL SERVICE

General note

The information which was provided under this heading was originally not sufficient to support a comprehensive assessment. Therefore, only a number of specific recommendations on selected sections can be made. It is recommended to Ukraine to further develop and elaborate these sections for the second review meeting, aiming at the publication of the report that would contain the full information.

Specific recommendations:

14. *Support further actions by the Main Civil Service Department to conduct general training on anti-corruption for public officials; in particular, develop and implement specific anti-corruption and ethics trainings, in particular for those public officials who work in corruption-risk areas. The in-service training should focus on operational and procedural issues, rather than on academic degrees, i.e. everyday job-related duties, including ethical standards.*
15. *Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government (executive, legislative and judicial), as well as the legislation on conflicts of interest which would include members of the Parliament and would be open for public. Ensure that enforcement of these rules is entrusted to an independent agency, possibly subordinated to the Anti-corruption Committee. In parallel, review and specify the provisions of the “Law on the Fight against Corruption” regarding the acceptance of gifts.*
16. *Update and disseminate a Code of Conduct or other similar rules for public officials. Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption.*
17. *Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of “whistleblowers” and launch a public (or internal) campaign to raise the awareness of these measures among civil servants.*
18. *Improve the system of internal investigations in cases of suspected or reported corruption offences. A separate, independent investigatory and reporting entity should be established, possibly within the general civil service, to receive and investigate complaints on corruption. Disciplinary proceedings should be conducted in line with international standards and afford the accused the possibility to defend him/herself; sanctions coming from a process that is perceived as fair and not politically motivated will be more effective in deterring corruption.*
19. *Analyse and introduce improvements in the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices in Ukraine or abroad to support such limiting eligibility criteria.*
20. *Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials. Ensure that the powers which are required for effective tax and customs administration are well balanced with respect for citizens’ rights and are not abused.*
21. *Enhance cooperation with civil society in addressing the corruption phenomena, including working more closely with university programs and a wide range of NGOs and the business community on*

- anti-corruption and ethics, both to enhance monitoring in civil society, and to encourage training and research resources in the field.*
- 22. In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the “Law on Information”, conduct investigations, and make reports and recommendations. Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions. Consider revising libel and defamation laws to grant greater scope for journalistic reporting.*
 - 23. In the sphere of money laundering, pursue the implementation of the FATF recommendations and MONEYVAL.*
 - 24. Ensure that competent authorities conducting investigation and prosecution of corruption offences have relevant financial expertise at their disposal (either by employing financial and auditing experts or by ensuring full cooperation of relevant experts in other state institutions).*